APPENDIX A

Constitutional Provisions, Statutes and Rules Involved

United States Constitution

Article 1, Section 8, reads in part as follows:

"The Congress shall have power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;" . . .

Article 4, Section 3, Clause 2, reads in part as follows:

"The Congress shall have Power to dispose of . . . Property belonging to the United States. . ."

Amendment V—Due Process Clause, reads in part as follows:

"No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment IX

"The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people."

Amendment X

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Atomic Energy Act of 1954

August 30, 1954, c. 1073, Sec. 1; 68 Stat. 921 et seq.; 42 U.S.C. (Supp. IV) Sec. 2011 et seq.:

"CHAPTER 1. DECLARATION, FINDINGS, AND PURPOSE

"SECTION 1. (68 Stat. 921; 42 U.S.C. 2011) DECLARATION.—Atomic energy is capable of application for peaceful as well as military purposes. It is therefore declared to be the policy of the United States that—

* * *

"b. the development, use, and control of atomic energy shall be directed so as to promote world peace, improve the general welfare, increase the standard of living, and strengthen free competition in private enterprise.

"SEC. 2. (68 Stat. 921; 42 U.S.C. Sec. 2012) FINDINGS.—The Congress of the United States hereby makes the following findings concerning the development, use, and control of atomic energy:

* * *

"b. In permitting the property of the United States to be used by others, such use must be regulated in the national interest and in order to provide for the common defense and security and to protect the health and safety of the public."

* * *

"SEC. 3. (68 Stat. 922; 42 U.S.C. 2013) PURPOSE.—It is the purpose of this Act to effectuate the policies set forth above by providing for—

* * *

"b. a program for the dissemination of unclassified scientific and technical information and for the control, dissemination, and declassification of Restricted Data, subject to appropriate safeguards, so as to encourage scientific and industrial progress;

* * *

"f. a program of administration which will be consistent with the foregoing policies and programs, with international arrangements, and with agreements for cooperation, which will enable the Congress to be currently informed so as to take further legislative action as may be appropriate."

* * *

"CHAPTER 2. DEFINITIONS

"SEC. 11. (68 Stat. 922; 42 U.S.C. 2014) DEFINITIONS.—The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this Act:

* * *

"c. The term 'atomic energy' means all forms of energy released in the course of nuclear fission or nuclear transformation."

* * *

"r. The term 'Restricted Data' means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142."

* * *

"t. The term 'special nuclear material' means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51, determines to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.'

* * *

"CHAPTER 11. INTERNATIONAL ACTIVITIES

"SEC. 123. (68 Stat. 940; 42 U.S.C. 2153) COOPERATION WITH OTHER NATIONS.—No cooperation with any nation or regional defense organization pursuant to . . . (Section) 144 shall be undertaken until—

"a. the Commission . . . has submitted to the President the proposed agreement for cooperation . . . which . . . shall include . . . (4) a guaranty by the cooperating party that any material or any Restricted Data to be transferred pursuant to the agreement for cooperation will not be transferred to unauthorized persons or beyond the jurisdiction of the cooperating party, except as specified in the agreement for cooperation;

"b. the President has approved and authorized the execution of the proposed agreement for cooperation . . .; and

"c. the proposed agreement for cooperation, together with the approval and the determination of the President, has been submitted to the Joint Committee (on Atomic Energy) . . .

* * *

"CHAPTER 12. CONTROL OF INFORMATION

"SEC. 141. (68 Stat. 940; 42 U.S.C. 2161) POLICY.—It shall be the policy of the Commission to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. Consistent with such policy, the Commission shall be guided by the following principles:

* * *

"b. The dissemination of scientific and technical information relating to atomic energy should be permitted and encouraged so as to provide that free interchange of ideas and criticism which is essential to scientific and industrial progress and public understanding and to enlarge the fund of technical information."

SEC. 142. (68 Stat. 941; 42 U.S.C. 2162) CLASSIFICATION AND DECLASSIFICATION OF RESTRICTED DATA.—

"a. The Commission shall from time to time determine the data, within the definition of Restricted Data, which can be published without undue risk to the common defense and security and shall thereupon cause such data to be declassified and removed from the category of Restricted Data.

* * *

"SEC. 144. (68 Stat. 942; 42 U.S.C. 2164) INTERNATIONAL COOPERATION.—

"a. The President may authorize the Commission to cooperate with another nation and to communicate to that nation Restricted Data . . . *Provided, however,* . . . That the cooperation is undertaken pursuant to an agreement for cooperation entered into in accordance with section 123. . .

* * *

"SEC. 146. (68 Stat. 943; 42 U.S.C. 2166) GENERAL PROVISIONS.—

"a. Sections 141 to 145, inclusive, shall not exclude the applicable provisions of any other laws, except that no Government agency shall take any action under such other laws inconsistent with the provisions of those sections."

"b. The Commission shall have no power to control or restrict the dissemination of information other than as granted by this or any other law."

* * *

"CHAPTER 14. GENERAL AUTHORITY

"SEC. 161. (68 Stat. 948; 42 U S.C. 2201) GENERAL PROVISIONS.—

"In the performance of its functions the Commission is authorized to—

* * *

"g. acquire, purchase, lease, and hold real and personal property, including patents, as agent of and on behalf of the United States, subject to the provisions of section 174, and to sell, lease grant, and dispose of such real and personal property as provided in this Act;

* * *

"CHAPTER 15. COMPENSATION FOR PRIVATE PROPERTY ACQUIRED

"SEC. 173. (68 Stat. 953; 42 U.S.C. 2223) PATENT APPLICATION DISCLOSURES.—

"In the event that the Commission communicates to any nation any Restricted Data based on any patent application not belonging to the United States, just compensation shall be paid by the United States to the owner of the patent application. The Commission shall determine such compensation. If the compensation so determined is unsatisfactory to the person entitled thereto, such person shall be paid 75 per centum of the amount so determined, and shall be entitled to sue the United States in the Court of Claims or in any district court of the United States for the district in which such claimant is a resident in a manner

provided by section 1346 of Title 28 of the United States Code to recover such further sum as added to such 75 per centum will constitute just compensation."

* * *

"CHAPTER 19. MISCELLANEOUS

"SEC. 261. (68 Stat. 960; 42 U.S.C. 2017) APPROPRIATIONS.—

"There are hereby authorized to be appropriated such sums as may be necessary and appropriate to carry out the provisions and purposes of this Act except such as may be necessary for acquisition or condemnation of any real property or any facility . . ."

Patent Act of 1952

"SEC. 122. CONFIDENTIAL STATUS OF PATENT APPLICATIONS.—Applications for patents shall be kept in confidence by the Patent Office and no information concerning the same given without authority of the applicant or owner unless necessary to carry out the provisions of any Act of Congress or in such special circumstances as may be determined by the Commissioner [of Patents]" (July 19, 1952, c. 950, sec. 1, 66 Stat. 801; 35 U.S.C. 122).

* * *

"SEC. 181. SECRECY OF CERTAIN INVENTIONS AND WITHHOLDING OF PATENT.— . . . Whenever the publication or disclosure of an invention by the granting of a patent, in which the Government does not have a property interest, might, in the opinion of the Commission [of Patents] be detrimental to the national security, he shall make the application for patent in which such invention is disclosed available for inspection to the Atomic Energy Commission, . . .

Each individual to whom the application is disclosed shall sign a dated acknowledgment thereof, which acknowledgment shall be entered in the file of the application. If, in the opinion of the Atomic Energy Commission . . . the publication or disclosure of the invention by the granting of a patent therefor would be detrimental to the national security, the Atomic Energy Commission, . . . shall notify the Commissioner [of Patents] and the Commissioner [of Patents] shall order that the invention be kept secret and shall withhold the grant of a patent for such period as the national interest requires, and notify the applicant thereof . . .

. . . The Commissioner [of Patents] may rescind any order upon notification by the heads of the departments and the chief officers of the agencies who caused the order to be issued that the publication or disclosure of the invention

is no longer deemed detrimental to the national security." (July 19, 1952, c. 950, Sec. 1, 66 Stat. 805; 35 U.S.C. 181)

"SEC. 182. ABANDONMENT OF INVENTION [and all claims against the United States based thereon] FOR UNAUTHORIZED DISCLOSURE.— . . . consent of the Commissioner [of Patents, for disclosure]—shall not be given without the concurrence of the . . . chief officers of the agencies who caused the order to be issued . . . (July 19, 1952, c. 950, 66 Stat. 805; 35 U.S.C. 182).

"SEC. 183. RIGHT TO COMPENSATION. An applicant . . . whose patent is withheld as herein provided, shall have the right, beginning at the date the applicant is notified that, except for such order, his application is otherwise in condition for allowance . . . to apply to the head of any department or agency who caused the order to be issued for compensation for the damage caused by the order of secrecy and/or for the use of the invention by the Government, resulting from his disclosure . . . The head of the department or agency is authorized . . . to enter into an agreement . . . in full settlement for the damage and/or use. . . If full settlement . . . cannot be effected, the head of the department or agency may award and pay to such applicant . . . not exceeding 75 per centum of the sum which the head of the department or agency considers just compensation for the damage and/or use. A claimant may bring suit against the United States . . . for an amount which when added to the award shall constitute just compensation for the damage and/or use by the Government, . . . The owner of any patent issued upon an application that was subject to a secrecy order . . . shall have the right, after the date of issuance of such patent, to bring suit in the Court of Claims for just compensation for the damage caused by reason of the order of secrecy and/or use by the Government of the invention resulting from his disclosure . . . (July 19, 1952, c. 950, 66 Stat. 806; 35 U.S.C. 183).

"SEC. 184. FILING OF APPLICATION IN FOREIGN COUNTRY.— Except when authorized by a license obtained from the Commissioner a person shall not file or cause or authorize to be filed in any foreign country prior to six months after filing in the United States an application for patent or for the registration of a utility model, industrial design, or model in respect of an invention made in this country. A license shall not be granted with respect to an invention subject to an order issued by the Commissioner pursuant to section 181 of this title without the concurrence of the heads of the departments and the chief officers of the agen-

cies who caused the order to be issued." (July 19, 1952, c. 950, 66 Stat. 806; 35 U.S.C. 184)

* * *

Code of Federal Regulations

Title 37. Part 1 (Title 35—Patents, Appendix, U.S.C. (Supp. IV), p. 2318)

SECTION 1.14. PATENT APPLICATIONS PRESERVED IN SECRECY

"a) Pending patent applications are preserved in secrecy. No information will be given by the Office respecting the filing by any particular person of an application for a patent, the pendency of any particular case before it, or the subject matter of any particular application, nor will access be given to or copies furnished of any pending application or papers relating thereto, without written authority of the applicant, or his assignee or attorney or agent, unless it shall be necessary to the proper conduct of business before the Office or as provided by this part.

"b) Abandoned applications are likewise not open to public inspection, except that if an application referred to in a United States patent is abandoned and is available, it may be inspected or copies obtained by any person on written request, without notice to the applicant. Abandoned applications may be destroyed after twenty years from their filing date, except those to which particular attention has been called and which have been marked for preservation. Abandoned applications will not be returned.

"c) Applications for patents which disclose or which appear to disclose, or which purport to disclose, inventions or discoveries relating to atomic energy are reported to the Atomic Energy Commission and the Commission will be given access to such applications, but such reporting does not constitute a determination that the subject matter of each application so reported is in fact useful or an invention or discovery or that such application in fact discloses subject matter in categories specified by sections 151(c) and 151(d) of the Atomic Energy Act of 1954, 68 Stat. 919; 42 U.S.C.A. 2181."

Code of Federal Regulations

Title 37. Part 5 (Title 35—Patents, U.S.C. (Supp. IV), (p. 2039)

SECTION 5.1. DEFENSE INSPECTION OF CERTAIN APPLICATIONS

"In accordance with the provisions of 35 U.S.C., section 181, applications for patent containing subject matter the disclosure of which might be detrimental to the national security are made available for inspection by defense agencies as specified in said section . . . Such inspection must be at the Patent Office and by responsible representatives of the agency who are required to sign a dated acknowledgment of such access accepting the condition that information obtained from the inspection will be used for no other purpose than in the administration of sections 181-188 of Title 35 U.S. Code. Applications relating to atomic energy are made available to the Atomic Energy Commission as specified in section 1.14 of this chapter (Patent Rule 14)."

Title 18 United States Code—Crimes and Criminal Procedure

CHAPTER 93. PUBLIC OFFICERS AND EMPLOYEES

SECTION 1905. DISCLOSURE OF CONFIDENTIAL INFORMATION GENERALLY

"Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus . . . of any person, firm, partnership, corporation, or association; . . . shall be fined not more than $1,000, or imprisoned not more than one year, or both; and shall be removed from office or employment. June 25, 1948, c. 645, 62 Stat. 791."

* * *

Federal Rules of Civil Procedure

Rule 56. SUMMARY JUDGMENT.

"(e) "FORMS OF AFFIDAVITS; FURTHER TESTIMONY. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits."

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13834

Decided September 19, 1957

Messrs. Carleton U. Edwards, II, Joseph Y. Houghton and *Bernard Margolius* submitted on the brief for appellant.

Messrs. Oliver Gasch, United States Attorney, and *Lewis Carroll* and *E. Riley Casey*, Assistant United States Attorneys, submitted on the brief for appellees.

Before EDGERTON, *Chief Judge*, and WILBUR K. MILLER and BURGER, *Circuit Judges*.

EDGERTON, *Chief Judge:* The appellant's complaint asked the District Court to enjoin the defendants, who are the members of the United States Atomic Energy Commission, and to enjoin also the "officers, agents, servants, and employees, and anyone associated with or acting in concert or participation with said defendants, and their successors in office", from disclosing "the heretofore unpublished features" of appellant's patent application No. 188,925, which pertains to the production of heavy water and other isotopes. The complaint says such publication would defeat patent applications appellant plans to file in various foreign countries; that a "secrecy order" of the Commission formerly prohibited appellant from filing those applications; that if appellant had been able to file them within one year after he filed his patent application in the United States, in most countries his filing would have been regarded as "running from the date of" his United States application; and that the Commission has now rescinded the secrecy order and declassified the entire subject of

the preparation of heavy water, including the plaintiffs patent application.

The District Court denied an injunction on the ground that previous publications had made the plaintiff's claim moot. We do not reach the question of mootness.

Though the complaint says the defendants "are sued only in their individual capacities", it is plain that the injunction the appellant seeks would, if valid restrain the United States Atomic Energy Commission from taking certain action. It is also plain that Congress authorized the Commission to take action of this general sort; *i.e.*, to disseminate technical information in the field of atomic energy. Congress did not leave the matter to implication. It expressly stated its intention to provide "a program for the dissemination of unclasssified scientific and technical information and for the control, dissemination, and declassification of Restricted Data, subject to appropriate safeguards, so as to encourge scientific and industrial progress . . . It shall be the policy of the Commission to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. . . . The dissemination of scientific and technical information relating to atomic energy should be permitted and encouraged . . ." 42 U.S.C. (Supp. IV) §§ 2013(b), 2161, 2161(b).

The legal theory asserted in appellant's complaint is that the "Defendants having received confidential disclosure of the subject matter of the said application have no right to publish the same or any reports dealing with such confidentially disclosed subject matter"; also, that "defendants having prevented the plaintiff from pursuing his right to apply for foreign patents . . . and having by said Classification and Secrecy Order prevented the plaintiff from even effectively negotiating for financing of such applications, are in equity and good conscience bound, on removing such classification and secrecy order, to make no publication even of information, if any, that they might otherwise have a right to publish, that would prevent the plaintiff from pursuing his remaining rights to seek foreign patents corresponding to said application, at least until the plaintiff has had a reasonable time in which to arrange for financing and pursuit of such rights."

The appellant has not "set out in his complaint the statutory limitation", if any, which might indicate that if, as

he claims, a publication would violate his rights, it would also exceed the Commission's authority.[1] In effect the complaint comes only to this, that the Commission should be restrained because it is about to err, to the appellant's damage, in exercising its authority. Accordingly we cannot distinguish this case from the *Larson* case, in which the Supreme Court held that the courts lacked jurisdiction. As in *Larson*, the United States has not consented to be sued; and like *Larson*, this is not a case "in which the statute or order conferring power upon the officer to take action in the sovereign's name is claimed to be unconstitutional." *Larson* v. *Domestic & Foreign Corp.*, 337 U.S. 682, 690. The complaint makes no such claim. Neither does appellant's "Statement of questions presented", in his brief on this appeal.[2]

We think the District Court erred in rejecting the government's contention that the suit is against the United States. We therefore remand the case with instructions to dismiss the complaint for lack of jurisdiction. *State of Arizona* v. *Hobby*, 94 U.S. App. D.C. 170, 221 F. 2d 498.

Remanded.

Judgment

THIS CAUSE came on to be heard on the record from the United States District Court for the District of Columbia, and was submitted on the briefs of the parties.

ON CONSIDERATION WHEREOF, It is ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, set aside, and that this cause be, and it is hereby, remanded

---

[1] He now makes, but the complaint does not, the paradoxical suggestion that the Commission is authorized to publish *only* classified or restricted information.

[2] His reply brief does seek to raise a constitutional question. It says: "For the Commission to effect dissemination of privately owned secret information without provision for compensation would be a wanton violation of plaintiff's rights under the due process clause of the Fifth Amendment of the Constitution. If the Atomic Energy Act purported to confer any such authority on the Commission, it would be unconstitutional." But if the District Court lacked jurisdiction of the complaint, arguments made here cannot supply it.

to the said District Court with instructions to dismiss the complaint for lack of jurisdiction.
Dated: September 19, 1957.

Per Chief Judge EDGERTON

APPENDIX C

Amendments to Complaint

With the approval of the Court, the Complaint in this cause is hereby amended by interlineation as follows:

(Amendment to be added at the end of numbered paragraph 1 of the complaint)

"This Court has jurisdiction of this action also because the contemplated acts sought to be enjoined herein are not acts which the defendants are authorized to perform in their official capacity as agents for and on behalf of the United States, in that either such contemplated acts are not within the limits of authority conferred on the defendants by the Atomic Energy Act of 1954 (Public Law 703, 83rd Cong., Approved Aug. 30, 1954; C. 1073, 68 Stat. 921; 42 U.S. Code Secs. 2011-2281), or in that said Act, if construed to confer such authority on the defendants, as applied to the facts of this case, is unconstitutional as a deprivation of private property without provision for compensation therefor, in violation of the Due Process clause of the Fifth Amendment to the Constitution of the United States, as hereinafter more fully appears."

(New paragraph 18 to be added following numbered paragrap 17 of the complaint)

"18. (The contemplated publication is not constitutionally authorized by statute). The statutory authority of the defendants is defined by the Atomic Energy Act of 1954. That Act does not authorize the defendants to "publish" a private citizen's invention disclosed to defendants in confidence and destroy property rights of the private owner thereof without the owner's consent, as is here involved. It does not provide for compensation for such publication and destruction. In more detail:

(a) The Act grants to the defendants broad powers to use, and to communicate privately to others for use, under

suitable safeguards and for certain purposes, "Restricted Data" (Sec. 141; 42 U.S.C. 2161), and provides for compensation for such use and for damages flowing from such private communication (Sec. 173; 42 U.S.C. 2223); however, it limits "Restricted Data" to data that has not been declassified and removed from the category of "Restricted Data", as has the plaintiff's invention (Sec. 11r; 42 U.S.C. 2014r).

(b) The Act grants to the defendants power to permit "property of the United States" to be used by others under suitable safeguards (Sec. 2b, Sec. 3, 42 U.S.C. 2012b, 2013; etc.); however, the invention here concerned is not property of the United States.

(c) The Act declares the policy of the United States in granting certain authority to the defendants to be that they shall direct their activities so as to "strengthen free competition in private enterprise" (Sec. 1b; 42 U.S.C. 2011(b), not so as to destroy property acquired by free enterprise. Its purpose in providing for a "program for the dissemination of unclassified scientific and technical information" (Sec. 3b); 42 U.S.C. 2013b is stated to be to effectuate the policies (*inter alia*, to permit use of "property of the United States" and to "strengthen free competition in private enterprise") set forth in Sections 1 and 2 of the Act. 42 U.S.C. 2011, 2012.

(d) With respect to unclassified scientific and technical information which is the property of a private citizen, the Act authorizes the defendants only to "permit" (the private owner) and "encourage" (the private owner) to disseminate the same (Sec. 141b; 42 U.S.C. 2161b) and specifies that the defendants shall determine what Restricted Data "can be published" (by the owner thereof) and *"shall thereupon cause such data to be declassified and removed from the category of Restricted Data"* (Sec. 142a). (42 U.S.C. 2162(a)) The Act does not in this connection say that the defendants shall publish—or even that they—may publish—the declassified data without regard to the property rights of a private citizen therein, but to the contrary specifies that the determination of what "can be published" shall be subject to the applicable provisions of any other law (such as the undertaking by the Government that the Patent Office (and those in privity

with it) shall maintain patent applications secret under Sec. 122 of the Patent Act of 1952, 35 U.S. Code, Sec. 122), and specifies that the defendants "shall have no power to control or restrict the dissemination of information other than that granted by this or any other law" (Sec. 146). 42 U.S.C. 2166

(e) The limited authority conferred by Sections 141-146 (42 U.S.C. 2161-2166) of the Act does not imply that the defendants, entrusted with a privately owned invention, "shall publish" the invention without regard to the property rights of the owner thereof. The Act does not provide for compensation for any such publication; hence properly construed it does not authorize such publication; or if construed to authorize such publication merely because it does not expressly prohibit the same, it is to that extent, as applied to this controversy, unconstitutional as a deprivation of property without due process of law or provision for compensation therefor, under the due process clause of the Fifth Amendment to the Constitution of the United States."

/s/ JEROME S. SPEVACK
Jerome S. Spevack

* * *

DISTRICT OF COLUMBIA, SS:

Jerome S. Spevack, being first duly sworn, on oath, deposes and says that he is the appellant in this action, that he has read the foregoing Amendments to Complaint, and that the matters and things therein set forth are true to the best of his knowledge, information and belief.

/s/ JEROME S. SPEVACK
Jerome S. Spevack

(Jurat)

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13834

On Remand by the Supreme Court

Decided June 9, 1958

Messrs. Carleton U. Edwards, II, Joseph Y. Houghton and *Bernard Margolius* for appellant.

Messrs. Oliver Gasch, United States Attorney, and *Lewis Carroll* and *E. Riley Casey*, Assistant United States Attorneys, for appellees.

Before EDGERTON, *Chief Judge*, and WILBUR K. MILLER and BURGER, *Circuit Judges*.

EDGERTON, *Chief Judge:* Appellant seeks to restrain the members of the Atomic Energy Commission from publishing certain material. The facts are stated in *Spevack* v. *Strauss*, 101 U.S. App. D.C. 339, 248, F. 2d 752, decided September 19, 1957. After that decision, appellant moved for leave to amend his complaint. We denied the motion and denied a petition for rehearing. The Supreme Court granted *certiorari*, vacated our judgment and orders, and remanded the cause to us with instructions "(1) to allow petitioner's proposed amendments to the complaint and (2) to determine, in light of the amended complaint, the issues raised by petitioner's appeal." *Spevack* v. *Strauss*, 355 U.S. 601.

The amended complaint says the proposed publication is unauthorized, and also that it would deprive appellant of property without compensation in violation of the Fifth Amendment. The original complaint raised no constitutional question.

In our former opinion we pointed out that Congress has authorized this sort of publication. We now hold that the Constitution does not forbid the publication. In determining this issue we need not pass upon appellant's contention that the publication will be a taking of his property for which compensation must be paid. For the Court of Claims has "jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution or any Act of Congress . . . ." 28 U.S.C. § 1491 (Supp. V). "Where the action against which specific relief is sought is a taking or holding of the plaintiffs' property, the availability of a suit for compensation against the sovereign will defeat a contention that the action is unconstitutional as a violation of the Fifth Amendment." *Larson* v. *Domestic & Foreign Corp.*, 337 U.S. 682, 697, fn. 18. "[I]f the authorized action in this instance does constitute a taking of property for which there must be just compensation under the Fifth Amendment, the Government has impliedly promised to pay that compensation and has afforded a remedy for its recovery by a suit in

the Court of Claims. . . . 'The Fifth Amendment does not entitle . . . [the owner] to be paid in advance of the taking' and the statute affords a plain and adequate remedy. . . ." *Yearsley* v. *Ross Construction Co.*, 309 U.S. 18, 21. *United States* v. *Causby*, 328 U.S. 256.

Appellant's amended complaint therefore fails to state a claim on which relief can be granted. By Rule 15(c), F.R.Civ.P., the "amendment relates back to the date of the original pleading." Accordingly we treat the appeal as though the amended complaint had been filed in the District Court. The case is remanded to that court with instructions to dismiss the amended complaint.

Remanded.

Judgment on Remand by the Supreme Court

Pursuant to judgment of the Supreme Court of the United States dated March 3, 1958, this case came on for reconsideration on the record from the United States District Court for the District of Columbia, on appellant's amended complaint, and on the memoranda filed by the parties subsequent to the remand.

ON CONSIDERATION WHEREOF, it is ordered by the Court:

(1) that the Clerk transmit to the District Court a certified copy of appellant's amendments to the complaint, filed in this court April 16, 1958; and

(2) that this case be, and it is hereby, remanded to the District Court with instructions to dismiss the amended complaint.

Dated: June 9, 1958.

Per Chief Judge Edgerton.

APPENDIX E

IN THE SUPREME COURT OF THE UNITED STATES

October Ter 1957

JEROME S SPEVACK, PETITIONER

vs.

LEWIS L. STRAUSS, *et al.*, RESPONDENTS

Affidavit on Behalf of Respondents in Opposition to Motion for Preliminary Injunction or a Stay

STATE OF MARYLAND,
COUNTY OF MONTGOMERY ss.

John A. Hall, being duly sworn, deposes and says:

That he is the Acting Assistant General Manager for International Activities of the United States Atomic Energy Commission;

That the temporary restraining orders in the above-identified proceeding have precluded the United States Atomic Energy Commission from disseminating considerable information on the subject of the dual temperature exchange process for the production of heavy water;

That the inability to disseminate and publish such information has had an adverse effect on the United States Government's efforts in the Atoms for Peace program announced by President Eisenhower on December 8, 1953;

That an important facet of the United States Government's foreign policy as implemented through the Atoms for Peace program is the dissemination of scientific and technical information relating to the field of atomic energy, so as to promote and encourage the free interchange of ideas essential to scientific and industrial progress;

That scientific and technical information relating to heavy water became declassifiable pursuant to Atomic Energy Commission action in December of 1956, and it was announced publicly that such information would soon be available;

That in April 1957 at a conference in Amsterdam, the Netherlands, on isotopes separation processes, the United States delegation was seriously impeded by an inability to disseminate and discuss certain areas of information on the dual temperature exchange process for the production of

heavy water because of the aforesaid temporary restraining order;

That in the interval between April 1957 and the present the United States Atomic Energy Commission, because of its inability to effectively participate, has refrained from satisfying requests from numerous individuals, private organizations, foreign governments and regional organizations for participation of United States technical personnel in meetings or projects wherein heavy water technology was the subject for discussion and the presentation of United States *know-how* was anticipated;

That currently, two outstanding examples exist of activities in which U. S. participation would be in the national interest, but such participation will be negligible if a restraining order is in effect:

1. The Second International Scientific Conference on the Peaceful Uses of Atomic Energy to be held at Geneva, Switzerland, on September 1 through 13, 1958—One of the important topics to be presented at the Conference will be isotopes separation processes. The U. S. presentation will, by necessity, be considerably weakened if free discussion on all heavy water technology is not permitted. A number of other countries have submitted several papers within this general area for discusion, but with a restraining order in effect no U. S. delegates to the Conference would be able to participate effectively.

2. The Organization for European Economic Cooperation, of which the U.S. is an associate, is currently making a serious study concerning the possibility of constructing a heavy water plant to produce a minimum of 100 tons per year. Formal requests have been made to the United States Atomic Energy Commission for advice and guidance in evaluating this proposal and in determining what production process to utilize. The United States Atomic Energy Commission has not been able to fully cooperate in this activity and no U. S. personnel have accepted invitations to participate in the Study Group's work because of the existing restraining orders;

That for the above reasons, it is felt that the national interest demands that the U. S. be in position to participate

in the above and other discussions on all aspects of production of heavy water so as to show the technical progress made by the United States in such production.

/s/ JOHN A. HALL
John A. Hall

Subscribed and sworn to before me in the County of Montgomery, State of Maryland, this 2 day of July, 1958.

BATTAILLE S. POWER

APPENDIX F

SUPREME COURT OF THE UNITED STATES

Order[1]

Upon consideration of the application of counsel for the petitioner and of the opposition of the Solicitor General thereto,

IT IS HEREBY ORDERED that Lewis L. Strauss, Harold S. Vance, Dr. Willard Libby, and Thomas Murray, and each of them, their officers, agents, servants, and employees, and all persons in active concert and participation with them, and their successors in office be, and the same are hereby, enjoined from the further promulgation or disclosures or from the communication or dissemination of prior disclosures, concerning the improved processes involved in petitioner's patent application as described in his complaint filed in the United States District Court for the District of Columbia.

This order is conditioned upon the timely filing of a petition for certiorari. Should such petition be timely filed, this stay is to continue pending action on said petition. In the event petition for certiorari is granted, the stay is to continue pending issuance of the judgment of this Court.

/s/ EARL WARREN
Chief Justice of the United States

Dated this 3rd day of July, 1958.

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[1] Comparable orders of this court and the courts below have been in continuous effect since April 11, 1957.

APPENDIX G

U. S. DEPARTMENT OF COMMERCE
UNITED STATES PATENT OFFICE

Washington

Re: Serial No.
Filed:
Inventor:

Access Acknowledgment

As Required by

Title 35, United States Code (1952) Section 181

I hereby acknowledge that I have inspected the disclosure of the above identified application for patent in the administration of the law cited above, on behalf of the department or agency which I represent, and promise that any information acquired from said application will not be divulged, disclosed or used for any purpose other than in the administration of the cited law.

Name Date Agency Represented

APPENDIX H

Legislative History of the Atomic Energy Act of 1954

(United States Code—Congressional and Administrative News, 83rd Congress 2nd Session 1954) [pages 3456-3539]

Senate Report No. 1699, June 30, 1954 (To accompany S. 3690)

The Joint Committee on Atomic Energy, to whom was referred the bill (S. 3690) to amend the Atomic Energy Act of 1946, as amended, and for other purposes, having considered the same, unanimously report favorably thereon, and recommended that the bill do pass. . . .

* * *

This report describes the background of S. 3690, . . . sets forth the basic considerations which impelled the Joint Committee to report it favorably, and furnishes a section-by-section analysis of the bill. [Page 3456]

* * *

The information control provisions of the organic law and of these bills are built around the concept of restricted data, which the Atomic Energy Act of 1946 defines as "all data concerning the manufacture or utilization of atomic weapons, the production of fissionable material, or the use of fissionable material in the production of power, but shall not include any data which the Commission from time to time determines may be published without adversely affecting the common defense and security." [Page 3462]

* * *

CHAPTER 1, DECLARATION, FINDINGS, AND PURPOSES

In this chapter are set forth the basic statements of policy and aims of the legislation and the constitutional findings in support of the legislation.

* * *

Section 2: The legal basis of the proposed legislation is the constitutional powers of the United States including, among others, to provide for the common defense; to raise and support armies; to provide and maintain a navy; to make all needful rules and regulations respecting the

territory or other *property belonging to the United States;* and to regulate commerce with foreign nations and among the several States. [page 3465]

* * *

. . . In view of the broad powers conferred upon the Congress by *article 4, section 3, clause 2,* of the Constitution, there can be no doubt of the authority of the Congress to exercise its powers to provide for any manner of regulation needed to protect the national interests, and the interests of the public.

* * *

Chapter 2. Definitions

"Section 11 r: "Restricted Data" is defined to include all data concerning (1) the design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy. The definition provides that data declassified or removed from the category is removed from the definition. [page 3466]

* * *

Chapter 12. Control of Information

This chapter sets forth provisions for the protection of secret information relating to atomic energy.

Section 141 sets forth the policies for dealing with restricted data; namely, that the Commission shall control the dissemination and classification of restricted data in such a manner as to assure the common defense and security; that the exchange of restricted data with other nations before enforcible international safeguards against the use of atomic energy for destructive purposes have been established are forbidden except pursuant to agreements for cooperation under section 144; and that dissemination of technical information is to be encouraged so as to have the free interchange of ideas and criticism which is essential to scientific and industrial progress and public understanding and to enlarge the fund of technical information. [page 3478]

* * *

Section 146 continues the application to restricted data and to persons in the atomic energy program of other laws relating to the protection of information. It also forbids the Commission from controlling or restricting any information outside of any powers granted by any law. [page 3480]

* * *

CHAPTER 15, COMPENSATION FOR PRIVATE PROPERTY ACQUIRED

Section 173 requires the Commission to pay just compensation for the disclosure of restricted data to any foreign nation where such restricted data is based on a patent application owned by a person other than the United States. [page 3483]

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